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Attorneys for Plaintiff

OWEN DIAZ

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

DEMETRIC DI-AZ, OWEN DIAZ, and
LAMAR PATTERSON,

Plaintiffs,

v.

TESLA, INC. dba TESLA MOTORS, INC.;
CITISTAFF SOLUTIONS, INC.; WEST
VALLEY STAFFING GROUP;
CHARTWELL STAFFING SERVICES, INC.;
and DOES 1-50, inclusive,

Defendants.

Case No. 3:17-cv-06748-WHO

**PLAINTIFF'S SUPPLEMENTAL
PRETRIAL BRIEF RE PLAINTIFF'S
PROPOSED JURY INSTRUCTION NO. 5**

Trial Date: September 27, 2021

Complaint filed: October 16, 2017

1 In lieu of Plaintiff's Proposed Jury Instruction No. 5, Plaintiff proposes the following
2 instruction:

3 Owen Diaz claims that Tesla, Inc. failed to take all reasonable steps to prevent
4 harassment based on race. To establish this claim, Mr. Diaz must prove all of the
5 following:

6 1. That Owen Diaz was an employee of or providing services under a contract
7 with Tesla, Inc.;

8 2. That Owen Diaz was subjected to harassment based on race in the course of
9 employment;

10 3. That Tesla, Inc., failed to take all reasonable steps necessary to prevent the
11 harassment based on race;

12 4. That Owen Diaz was harmed; and

13 5. That Tesla's failure to take all reasonable steps to prevent harassment was a
14 substantial factor in causing Mr. Diaz's harm.

15 When evaluating an employer's reasonableness, you may consider an employer's
16 policies and procedures as well as what remedial efforts it takes to address the harassment
17 and to prevent future incidents of harassment.

18 The first portion of the instruction copies the text of CACI No. 2527. It adds the elements
19 of harm and "substantial factor" causation, mooted Defendant's previous objections.
20

21 The final sentence of the instruction sets out factors relevant to evaluating the
22 reasonableness of an employer's remedial efforts. These factors are established in *Ellison v.*
23 *Brady*, 924 F.2d 872, 881 (9th Cir. 1991) and *Fuller v. City of Oakland*, 47 F. 3d 1522, 1528 (9th
24 Cir. 1995): "[T]he reasonableness of an employer's remedy will depend on its ability to stop
25 harassment by the person who engaged in harassment. In evaluating the adequacy of the remedy,
26 the court may also take into account the remedy's ability to persuade potential harassers from
27 unlawful conduct." *Ellison v. Brady*, 924 F.2d 872, 881 (9th Cir. 1991).
28

1 DATED: September 23, 2021

/s/ Cimone A. Nunley
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